thamby's claim fails, and that his suit must be dismissed.

[The remainder of the judgment deals with the question as to whether on the facts the additional oral agreement had been proved to have been made, and the Chief Justice found it had not been proved.—Editor.]

[APPELLATE CRIMINAL JURISDICTION]

BURTON, J.

June 16, 1930.

POH BAH CHEET.....Appellant

vs.

PUBLIC PROSECUTOR.....Respondent

[PERAK MAGISTRATE'S CRIMINAL APPEAL No. 35 of 1930]

Preventive detention—Severity of sentence.

The fact that a convicted prisoner has undergone terms of imprisonment does not of itself justify sentence to a further term. All the circumstances of the case must be considered, including the magnitude of the latest offence. There is no provision for preventive detention in this country.

English law in *Percy Victor Knell*, 19 Cr. App. R. 169, followed.

Appellant in person.

A. Sleep, Deputy Public Prosecutor, for Respondent.

BURTON, J.—The accused was charged with picking the pocket of Wong Han in Hugh Low Street, Ipoh, on 2nd March, 1930. He was convicted by R. S. Jervoise, Esq., Magistrate, Ipoh, and sentenced to one year's Rigorous Imprisonment, with 12 strokes whipping to be followed by 2 years' police supervision.

I think there is no doubt that this conviction is correct. The accused has an unusually bad record. This is his eighth conviction since January, 1923, and many of the offences he has committed would appear from the sentences to be among the more serious that come before a Magistrate's Court.

The Magistrate thought this is a case for preventive detention, and imposed the maximum sentence in his power. But there is no provision for such detention in this country, and the Magistrate should have treated the offence on its merits.

It is an established principle that the Magistrate in passing sentence should take into account all the circumstances including the magnitude of the offence in respect of which he is passing sentence. Hewart, L.C.J. said in *Percy Victor Knell*, 19 Cr. App. R. 169.

> "It has been said again and again in this Court that the mere fact that a man has committed serious offences and suffered long terms of detention in respect of them is not in itself a reason for imposing a sentence of a long term afterwards because of the previous sentences when the offence charged is a minor offence."

On this principle I reduced the sentence to 3 months' R.I., and remitted the sentence of flogging. The order for police supervision is to stand.

[SPECIAL CRIMINAL JURISDICTION]

ELPHINSTONE, C.J.

August 21, 1930.

GURDIT SINGH.....Petitioner

[SELANGOR CRIMINAL APPLICATION No. 4 of 1930].

Criminal Procedure Code, 1926, Section 363 (i) (b)—Habeas Corpus.

A person is not improperly nor illegally detained when he has been sentenced to imprisonment by a Judge of the Supreme Court in a case properly brought before him, and it is not proper for another Judge of the Supreme Court to act under Section 363 of the Criminal Procedure Code to decide that question.

E. Pratt for the Petitioner.

B. G. Bradley, Deputy Public Prosecutor, for the Public Prosecutor.

The facts appear sufficiently from the judgment of Elphinstone, C.J.

ELPHINSTONE, C.J.—This is an application by a person who has been sentenced to three months' rigorous imprisonment by Mudie, J., for an order that he may be set at liberty under section 363 (b) of the Criminal Procedure Code.

The applicant was convicted of the offence of bringing a false charge. The magistrate ordered that he be bound over to keep the peace by a bond for a period of 6 months or in default to undergo 6 months' simple imprisonment. The applicant appealed against the conviction to the Court of a Judge. Mudie, J., dismissed the appeal against the conviction but set aside the order requiring the appellant to give security, and in lieu of that he sentenced the appellant to three months' rigorous imprisonment.

Section 363 (b) of the Criminal Procedure Code, under which the application is made, reads as follows:—

> "The Court of a Judge may whenever it thinks fit direct
>
> (1) that any person who.....
>
> (b) is alleged to be illegally or improperly detained in public or private custody within the limits of the Federated Malay States be set at liberty."